IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.12282-M of 1998

DATE OF DECISION: SEPTEMBER 13, 2006

Joginder Singh and others

.....PETITIONERS

VERSUS

State of Punjab and others

.....RESPONDENTS

CORAM: **HON'BLE MR.JUSTICE SATISH KUMAR MITTAL**

Present: Mr. R.S.Sihota, Advocate,
for the petitioners.
Mr.N.S.Gill, AAG, Punjab.

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JUDGMENT

Petitioners Joginder Singh, Gurcharan Singh, Sohan Lal, sons of Pakhar Singh, Smt.Harjinder Kaur and Pakhar Singh have filed this petition under Section 482 of the Code of Criminal Procedure for quashing FIR No.116 dated 6.5.1998 registered against them under Sections 363/366 IPC at Police Station City Nakodar; and Rapat No.6 dated 3.5.1998 lodged under Sections 107/151 Cr.P.C. at Police Station Nakodar, being grave abuse of the process of law and have been lodged to harass the petitioners with mala fide and oblique motive.

2. In this case, on 3.5.1998 Hans Raj (respondent No.4 herein) made a complaint in writing to the police that Gurcharan Singh-petitioner had abducted his daughter and the other petitioners, namely, Joginder Singh, Pakhar Singh, Mahi, resident of village Allowal and Raj Kumar were aware about the said abduction, but when he made an enquiry about his daughter

from them, those persons threatened that he will be killed. On the basis of the said complaint, the police prepared a Kalendra against Mahi, Joginder Singh, Gurcharan Singh and Raj Kumar, on the basis of which DDR No.6 dated 3.5.1998 was registered at Police Post City, Nakodar under Sections 107/151 Cr.P.C. against those persons. In view of the said Kalendra, the aforesaid persons were arrested and were also got medically examined by the doctor at Civil Hospital, Nakodar. On the next day, they were produced before the SDM, Nakodar. Subsequently on 6.5.1998 the aforesaid Hans Raj made a statement about the abduction of his daughter upon which the aforesaid FIR was registered.

3. In the FIR, it has been stated that the daughter of the complainant was missing from her house from the night of 26.4.1998. Serious search for her whereabouts was made. Subsequently, a telephonic message was received by the neighbour from the daughter of Hans Raj, who informed that his daughter was standing on the Ludhiana by-pass near Bus Stand and she asked him to bring her. Thereafter, the complainant along with his son immediately rushed to the said place where he found that his daughter was standing. She was brought back to the house where she disclosed that on 26.4.1998 at about 11.00 PM Gurcharan Singh-petitioner knocked at the door of the house and asked her to come out on the pretext that he wanted to have an important talk with her. When she came out, he caught hold her and took her to his house. The other accused were present in the house at that time and they stated that now she should not feel disturbed and all their family members were with her. They said that Gurcharan Singh is a very good boy and tomorrow they will marry her with him and later she will be sent to America. Thereafter, accused Harcharan Kaur, who was sister-in-law

of Gurbachan, gave her a red Chunni and put Sindoor on her head. On the next morning, accused Pakhar Singh along with other accused taken her to the Bus Stand and asked her to go to Jalandhar with Gurcharan Singh and the other accused will join there. At that time, all the accused also said that they had taken the revenge of old enmity from her father and she was asked to go anywhere at her will. Thereafter, she took a bus and came to Ludhiana by-pass and made a telephonic call to her neighbour from one STD. Later on, the statement of Kamlesh Rani was recorded under Section 164 Cr.P.C. by the Judicial Magistrate Ist Class on 8.5.1998 in which she had reiterated the aforesaid stand. After the investigation, the police found the allegations to be correct and then submitted the challan against all the persons.

4. After filing of the challan, the petitioners filed the instant petition for quashing of the aforesaid FIR as well as Rapat No.6 dated 3.5.1998 lodged under Sections 107/151 Cr.P.C. at Police Station Nakodar.

5. In the petition, it has been alleged that the daughter of the complainant Hans Raj was missing from the night of 26/27.4.1998. Nobody knew about her whereabouts. However, on 28.4.1998, the Incharge of Police Post, Nakodar illegally detained Gurcharan Singh, Mahi and Raj Kumar in that connection. Thereupon, Sohan Lal son of Pakhar Singh (petitioner herein) filed Crl.Writ Petition No.599 of 1998 in this Court in which a Warrant Officer was appointed and on 3.5.1998 he found Gurcharan Singh, Mahi and Raj Kumar sitting in the court-yard of Police Station Nakodar. It is the case of the petitioners that though they were illegally detained by the local police but later on they recorded a DDR on the statement of Hans Raj showing their arrest under Sections 107/151Cr.P.C. and Joginder Singh-petitioner was also taken into custody at

1.45 PM. It has been further stated in the petition that during their detention, all the four persons were severely beaten up to teach them a lesson for having got raided the Police Station by the Warrant Officer and subsequently on the complaint of Hans Raj, FIR No.116 dated 6.5.1998 was registered under Sections 363/366 IPC at Police Station City Nakodar on the basis of a concocted story.

6. It is the stand of the petitioners that they were falsely implicated by the police on account of the fact that Pakhar Singh-petitioner No.5 had contested the election to the post of Municipal Commissioner of Municipal Committee, Nakodar against one Harbhajan Lal. The said election was won by Harbhajan Lal. Thus, their implication in the aforesaid FIR is totally mala fide and with an ulterior motive, therefore, the aforesaid FIR and DDR are liable to be quashed.

7. Counsel for the petitioners submitted that the impugned FIR and DDR are liable to be quashed on the following grounds:-

(i) that actually three persons, namely, Raj Kumar, Gurcharan Singh and Mahi were illegally detained on 28.4.1998 by the local police in connection with the disappearance of the daughter of the complainant. As per the report of the Warrant Officer, those persons were found sitting in the court-yard of the Police Station on 3.5.1998, but to cover up the illegal detention, the local police registered a false DDR on the complaint of Hans Raj. Learned counsel submits that during illegal detention, they were tortured and this Court while disposing of Crl.W.P.No.599 of 1998 directed the SSP, Jalandhar to take necessary departmental action against the

delinquent police official. These facts show that on the false facts, DDR was registered against the petitioners and other two persons.

(ii) Learned counsel submits that the impugned FIR was registered on 6.5.1998 totally on the basis of the concocted story with an object to take political revenge from petitioner No.5 at the behest of Harbhajan Lal through his supporter Hans Raj-complainant.

(iii) That the story made out in the FIR is highly improbable. Neither any persuasion nor any force is allegedly exercised or used by any of the petitioners against Kamlesh Rani. The tenor and texture of the FIR clearly show that Kamlesh Rani of her own was in the company of some one else other than the petitioners in Ludhiana. She was freely moving and was having access to telephone and remained present at Ludhiana by-pass during the period when her father reached from Nakodar to Ludhiana.

(iv) The version given in the FIR is totally false and motivated and has been alleged with mala fide objects.

8. In support of his contention, learned counsel for the petitioners submitted that the case of the petitioners falls in categories No.4 and 7 enumerated by the Supreme Court in State of Haryana and others v. Ch.Bhajan Lal and others, AIR 1992 SC 604 and the impugned FIR is liable to be quashed in exercise of the inherent powers of this Court under Section 482 Cr.P.C.

9. After hearing the counsel for the parties and going through the

contents of the petition as well as the reply filed on behalf of the respondent-State, I do not find any merit in the instant petition. In this petition, the petitioners have raised many disputed questions of facts to show that the FIR lodged by complainant Hans Raj regarding abduction of his daughter is totally based on a concocted version. According to the counsel for the petitioners, this concoction was made at the behest of Harbhajan Lal, who contested the election of Municipal Commissioner against petitioner No.5. Undisputely, there is no relationship between Hans Raj and said Harbhajan Lal. Only it has been stated that complainant Hans Raj is one of the supporters of one Harbhajan Lal. In my opinion, merely because Hans Raj was the supporter of one Harbhajan Lal, he will not lodge false FIR by involving the prestige of his daughter.

10. The second contention raised by the counsel for the petitioners that the fact that the petitioners were illegally detained by the police and subsequently to cover up their illegal act and to teach a lesson to the petitioners for having got conducted the raid at Police Station from a Warrant Officer, the FIR was registered with an oblique motive. While disposing of Crl.W.P.No.599 of 1998, no finding was recorded by this Court that the detention of the petitioners on 28.4.1998 was illegal. In my opinion, it is again a question of fact which would be determined on the basis of the evidence whether the detention was illegal or not, or whether wrong DDR was registered or not. On such disputed questions of facts, in my opinion, the FIR cannot be quashed. In this case, in the FIR, a thorough investigation was made by the local police. Thereafter, the challan has been submitted on the basis of the material collected during the investigation which, prima-facie, disclose the commission of the alleged

offence. In the facts and circumstances of the instant case, neither category 4 nor category 7 as enumerated by the Supreme Court in State of Haryana and others v. Ch.Bhajan Lal and others (supra) are applicable. Category 4 provides that where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) Cr.P.C. From the allegations made in the FIR, it cannot be said that no cognizable offence was made out. Category 7 provides that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive, the FIR can be quashed. In the instant case, I do not find that the allegations of mala fide alleged by the petitioners prima-facie made out a case for quashing of the FIR. In my opinion, in the present case, the allegations made in the FIR do clearly constitute a cognizable offence justifying the registration of a case and investigation thereon. In my opinion, the case of the petitioners does not fall under any one of the categories of cases enumerated by the Supreme Court in State of Haryana and others v. Ch.Bhajan Lal and others (supra), calling for exercise of extra-ordinary powers to quash the FIR.

11. In view of the aforesaid discussion, there is no merit in the petition and the same is hereby dismissed.

September 13, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE